

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION

FILED
U.S. DISTRICT COURT
BRUNSWICK DIV.
2011 JUL -8 AM 11:12
CLERK *J. Taylor*
SO. DIST. OF GA.

JORGE CORTES-MORALES,

Petitioner,

v.

CIVIL ACTION NO.: CV210-159

ANTHONY HAYNES, Warden,

Respondent.

ORDER

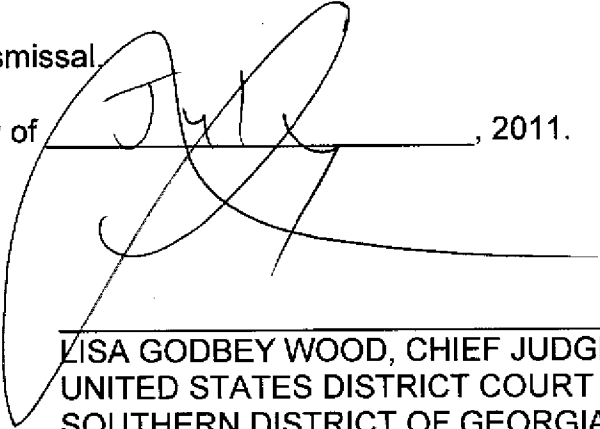
After an independent and *de novo* review of the entire record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In his Objections, Petitioner Jorge Cortes-Morales ("Morales") states that his claim is that, without the enhancement under the Armed Career Criminal Act ("ACCA"), his sentence exceeds the statutory maximum. He states that his claim is not based on a misapplication of the United States Sentencing Guidelines. Morales cites the dissenting opinion in Gilbert v. United States, 640 F.3d 1293 (11th Cir. 2011), to support his assertion that, because he is not a career criminal, he is not precluded from seeking relief under 28 U.S.C. § 2241.

Despite Morales' assertions to the contrary, he *is* an armed career criminal, and he was sentenced as such. To that end, the majority opinion in Gilbert, which is binding on this Court, does not provide Morales with his requested relief. In fact, Gilbert

forecloses Morales' § 2241 petition, as the Magistrate Judge discussed in his Report. Equally without merit is Morales' assertion that the majority opinion in Gilbert is an unconstitutional suspension of the writ of habeas corpus. Further, Morales contends that Carachuri-Rosendo v. Holder, ___ U.S. ___, 130 S. Ct. 2577 (June 14, 2010), forms the basis of his petition. However, the Carachuri-Rosendo decision involved removal proceedings under the Immigration and Nationality Act and does not change any sentencing enhancement Morales may have received.

Morales' Objections are **overruled**. Morales' petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2241, is **DISMISSED**. The Clerk of Court is directed to enter the appropriate judgment of dismissal.

SO ORDERED, this 9 day of July, 2011.



LISA GODBEY WOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA